IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 162 of 2003

IN

SUMMARY SUIT NO. 140 OF 2003

M/s. Royal Lifters & Excavators
Pvt. Ltd. ..Plaintiffs

versus

M/s. Nila Bauart Eng. Ltd. ..Defendants

Mr. K. Shroff i/b. M/s. Firdosh & Co. for the Plaintiffs.
Mr. Rahul Chitnis i/b. S. N. Nair for the Defendants.

CORAM : D. G. DESHPANDE,J.

DATE : 11TH OCTOBER 2004.

P.C. :

1. Heard counsel for the parties. The plaintiffs have filed this suit for recovering certain amounts from the defendants on the basis of the documents filed with the plaint viz. Exhibit A-1 which is a work order for excavator and Exhibits A-2, A-3 and A-4, and has taken out the summons for judgment. Apart from the documents Exhibit A-1 to

A-4 there are other documents on the basis of which the plaintiffs base their claim. The most important is the acknowledgment of the defendants at page 38. It is written by the defendants on 15.7.2002 wherein as per their account books an outstanding amount is Rs.41,45,456/=. Thereafter letters were written to the defendants by the plaintiffs for the recovery of the amount. Then one payment of Rs.2,50,000/- was made by the defendants by demand draft as per their letter dated 16.8.2002. By their further letter dated 17.9.2002 the defendants agreed to pay the balance amount in monthly instalments of Rs.7.5 lacs starting from September 2002. They also agreed that if they receive their block money, they will clear the dues at the earliest. However, no instalment pursuant to the aforesaid letter came to be paid. Thereafter plaintiffs wrote number of letters to the defendants and then ultimately filed this suit.

2. In reply to the summons for judgment the defendants filed their affidavit in reply and they are raising three contentions. Firstly, according to them in the detailed work order about which there is a reference in Exhibits A-1 and A-2 they have made known to the plaintiffs that the matter will be in any case within the jurisdiction of Baroda and Gujarat High Court. Their second contention is that all the letters signed by the plaintiffs were

replied to. Their third defence is that so far as acknowledgment at Exhibit 'C' is concerned, it was written by the person not authorised by the Defendants. According to the counsel for the defendants all these three issues are triable issues and therefore unconditional leave to defend the suit should be granted to the defendants.

3. I am not convinced by any of the submissions made by counsel for the defendants. So far as first objection to jurisdiction is concerned, the plaintiffs have obtained leave of this Court under Clause XII of the Letters Patent. Secondly if according to the defendants the clause about jurisdiction is included in the detailed work order as mentioned in Exhibits A-1 and A-2, copy of the detailed works order is not filed with its reply. No document is filed with the reply to show that at any time after Exhibits A-1 and A-2 the detailed work order was served upon the plaintiffs. There is no acknowledgment of the plaintiffs in that regard. Secondly, it was the defendants who have placed order with the plaintiffs and therefore ordinarily it will be the plaintiffs who will decide as about the courts having jurisdiction and the defendants placing order, cannot, in any manner alleged by the defendants can fix jurisdiction of the Court.

4. Next contention of the defendants is that all the letters have been replied to. This is also not supported by any annexures to the reply. If at all the defendants has given reply to all the letters of the plaintiffs, replies would have been filed with the affidavit in reply. Merely placing reliance upon those documents without filing copies thereof is of no help. Further according to the defendants so far acknowledgment of liability is not signed by the person authorised by the defendants. In this regard my attention was drawn by the Counsel for the plaintiffs to two contradictory statements in the affidavit in reply. As per which firstly the plaintiffs procured acknowledgement, in paragraph 13 it is stated that the plaintiffs procured this acknowledgment, from the Assistant Cashier and this is done by the plaintiffs after misappropriating the defendants stationery, and, secondly, in paragraph 20 they have stated this letter of acknowledgement was obtained by inducement / coercion from an office boy of the defendants. Looking to the nature of the transaction, the amount involved, conduct of the defendants, their sending demand draft of Rs.2,50,000/= and agreeing to pay remaining amount in monthly instalments of Rs.7.5 lacs. Both these defences that the acknowledgment is obtained by coercion or fraud or by committing theft of the stationery, is an after thought and is a bogus

defence. Thirdly, and most importantly, counsel for the plaintiffs has shown me letter dated 24.3.2003, which is in reply to their letter for inspection and the Defendants Advocate have stated that since they have raised preliminary issue of jurisdiction no inspection can be granted or that inspection will be given only after the preliminary issue of jurisdiction is decided by the court. This is not permissible nor this is a proper attitude. If the defendants is relying upon certain documents the plaintiffs have a right to get inspection and not giving inspection, is a circumstance from which an adverse inference can be drawn by the court. This gets the contention of the plaintiffs strengthened by the fact that inspection is not given firstly because either the documents are not there or they do not support, and, secondly not filing copies of the documents with the reply also support the case of the plaintiffs.

5 Therefore, this is a case where there is no defence. Hence, conditional leave to defend the suit is granted to the Defendants on depositing a sum of Rs.35 lacs in this court, within a period of eight weeks from today.

6. In the event of the defendants depositing the said amount, the suit to be transferred to the

list of Commercial Causes. Written Statement or points of defence to be filed by the defendants within a period of twelve weeks from today and affidavit of documents or list of documents within two weeks thereafter. Discovery or inspection of documents within two weeks thereafter. Suit to be placed on regular board for hearing thereafter.

7. In the event of the defendants depositing the amount of Rs.35 lacs in the court, as aforesaid, the Prothonotary & Senior Master to invest the said amount with a Nationalised Bank, initially for a period of three years and to renew the same thereafter for suitable periods until further orders of the court. Counsel for the plaintiffs to follow the investment order with the Prothonotary & Senior Master.

8. If the defendants fail to deposit the said amount in the court, liberty to the plaintiffs to have the suit set down forthwith for exparte hearing. The Summons for Judgment stands disposed of accordingly.

9. All concerned parties and the Prothonotary & Senior Master to act upon ordinary copy of this order duly authenticated by the Court Associate.

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